

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS DUANE DESONIA,

Defendant-Appellant.

UNPUBLISHED

January 24, 2012

No. 301579

Saginaw Circuit Court

LC No. 06-027294-FH

Before: SAWYER, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a jury trial of operating a motor vehicle while intoxicated, third offense (OWI 3d), MCL 257.625(1)(b), (9), and falsely reporting a misdemeanor, MCL 750.411a(1)(a). Defendant was sentenced to concurrent terms of 36 months to 10 years' imprisonment for OWI 3d, and 90 days for falsely reporting a misdemeanor. We affirm.

Defendant was convicted of the current crimes in 2008. Prior to sentencing, defendant fled to Mississippi. Eventually, defendant was extradited to Michigan and pleaded guilty to the crime of escape while awaiting sentencing, MCL 750.197(2).

Defendant argues that his OWI 3d sentence violated the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution. Defendant asserts that his minimum sentence of 36 months violated his "right to a fair sentence" because the circuit court considered a separate offense, the escape, when imposing sentence. Defendant's argument fails because its premise is erroneous: The court did not indicate that it was considering the escape conviction when sentencing him for OWI 3d.

Defendant was sentenced on November 15, 2010, for his convictions in the current case, LC No. 06-027294-FH (OWI 3d and falsely reporting a misdemeanor), and in LC No. 10-034783-FH (escape). Defendant cites the following passage as indicating that the court sentenced him for OWI 3d "because of conduct which was the subject of a separate case" (escape):

No, no, I heard that when I let him out on PLUS. Why should I sentence him on the low end of the guidelines when I let him out after he was convicted

and he escaped? So I need to know why I should now turn around and let him on the low end of the guidelines.

Defendant asserts that the above comments were made in response to his having asked for “a sentence on the low end of the 5-46 months guidelines scoring on the DUIL case.”

The transcript is somewhat difficult to follow with respect to distinguishing when the parties and the court were talking about the present case or the escape case, but a careful reading of the transcript shows that defendant was asking for a sentence at the low end of the guidelines for the escape conviction when the court made the above-cited comments. The full context of the excerpt is as follows:

Defense counsel: Focusing solely on the OUIL case, and we’ll speak to the escape later. In looking at his past record in this regarding alcohol, it does appear he has an alcohol problem. He requested that he have some counseling for that. We’ve submitted to the Court a number of letters not only from Mr. Desonia himself, but from members of his family.

The court: I’ve read every single one of them.

Defense counsel: And we are—ask the Court to not sentence him to prison on that case but to have him attend counseling as well as any type of in-house counseling or jail in the OUIL case.

And as to the escape charge, the Court is well aware of this case. The Court does have a . . . wide range of sentencing months, 5 to 46 months. I don’t believe there’s any objection to concurrent time. I think in both PSI reports, concurrent would be available to this Court.

We’d ask the Court to sentence him on the lower end of the guidelines in this matter.

The court: Because?

Defense counsel: Well, he does have employment.

The court: No, no, I heard that when I let him out on PLUS. Why should I sentence him on the low end of the guidelines when I let him out after he was convicted and he escaped? So I need to know why I should now turn around and let him on the low end of the guidelines. [Emphasis added.]

It is clear from the context in which the cited comments were made that defense counsel had turned from discussing sentencing in the present case to sentencing in the escape case.¹

¹ Earlier, defense counsel had requested that the guidelines for the escape conviction be changed from 10 to 46 months to 5 to 46 months.

Moreover, the trial court was simply stating that it did not believe defendant's employment outlook should be a mitigating factor in sentencing on the escape charge when he had quit his job and fled the state after conviction in the current case.

Because the premise of defendant's argument is in error, the Court need not address the merits of his argument.

Affirmed.

/s/ David H. Sawyer

/s/ William C. Whitbeck

/s/ Michael J. Kelly